IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

ROBERT L. LAPOINT, Plaintiff, vs. CRST INTERNATIONAL, INC., an Iowa corporation, and BOB FREEMAN and JIM SCHOMMER, individually, Defendants	No. C02-0180 **ORDER**

This matter comes before the court pursuant to the defendants' March 5, 2004, motion for summary judgment (docket number 19) and the plaintiff's April 1, 2004, motion for summary judgment (docket number 20). The parties have consented to the exercise of jurisdiction by a United States Magistrate Judge. For the reasons set forth below, the defendants' motion is granted in part and denied in part, and the plaintiff's motion for summary judgment is denied.

Statement of Material Facts Taken in a Light Most Favorable to the Plaintiff

The plaintiff, Robert L. Lapoint, brought this claim pursuant to the Family and Medical Leave Act, Iowa's Wage Payment Collection Law (Iowa Code § 91A), and the Fair Labor Standards Act. The plaintiff claims that the defendants rescinded a scheduled pay increase and benefits in violation of the Family and Medical Leave Act, that the defendants failed to pay him vacation pay, sick pay, and other benefits due after his termination, and that he is owed overtime pay pursuant to the Fair Labor Standards Act.

The plaintiff began employment with Defendant CRST International in November, 1987. In September, 1999, he was transferred to the position of fleet manager/dispatcher. After accepting the position of fleet manager/dispatcher, the plaintiff regularly worked more than forty hours per work week. On December 14, 2001, the plaintiff experienced a seizure. He provided medical certification to the defendants for purposes of obtaining leave under the Family and Medical Leave Act (FMLA). The plaintiff began leave on December 14, 2001 and did not return to work until February 15, 2002. On December 14, 2001, the plaintiff was also approved for a pay raise which was to become effective on January 1, 2002. Defendant Jim Schommer, with the approval of Defendant Bob Freeman, rescinded the plaintiff's pay raise on January 7, 2002. When the plaintiff returned to work on February 15, 2002, he had used nine weeks of FMLA leave.

On June 21, 2002, the plaintiff experienced another seizure and again took leave pursuant to the FMLA. The plaintiff's physician advised that he not work. Surgery was scheduled for August 9, 2002 and then rescheduled for July 25, 2002. The plaintiff's twelve weeks of FMLA leave was exhausted on July 12, 2002. Defendant Schommer advised Defendant Freeman to send the plaintiff an employment termination letter on July 24, 2002. On or about July 24, 2002, the defendants or representatives of the defendants requested that CRST's health insurance carrier terminate the plaintiff's group health insurance coverage effective June 17, 2002. On July 25, 2002, Defendant Freeman sent a letter of termination of employment to the plaintiff. The letter stated that the plaintiff's effective termination date was June 17, 2002. On August 1, 2002, Defendant Freeman sent a second letter to the plaintiff. The August 1, 2002 letter amended the plaintiff's termination date to July 13, 2002 and further amended the date of his termination from the group health insurance coverage to July 13, 2002. The defendants advised the plaintiff that he was not eligible to collect benefits under CRST's group disability plan.

Summary Judgment: The Standard

A motion for summary judgment may be granted only if, after examining all of the evidence in the light most favorable to the nonmoving party, the court finds that no genuine issues of material fact exist and that the moving party is entitled to judgment as a matter of law. Kegel v. Runnels, 793 F.2d 924, 926 (8th Cir. 1986). Once the movant has properly supported its motion, the nonmovant "may not rest upon the mere allegations or denials of [its] pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). "To preclude the entry of summary judgment, the nonmovant must show that, on an element essential to [its] case and on which it will bear the burden of proof at trial, there are genuine issues of material fact." Noll v. Petrovsky, 828 F.2d 461, 462 (8th Cir. 1987) (citing Celotex Corp. v. Catrett, 477 U.S. 317 (1986)). Although "direct proof is not required to create a jury question, . . . to avoid summary judgment, 'the facts and circumstances relied upon must attain the dignity of substantial evidence and must not be such as merely to create a suspicion.'" Metge v. Baehler, 762 F.2d 621, 625 (8th Cir. 1985) (quoting Impro Prod., Inc. v. Herrick, 715 F.2d 1267, 1272 (8th Cir. 1983)).

The nonmoving party is entitled to all reasonable inferences that can be drawn from the evidence without resort to speculation. Sprenger v. Fed. Home Loan Bank of Des Moines, 253 F.3d 1106, 1110 (8th Cir. 2001). The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff. Id. Although it has been stated that summary judgment should seldom be granted in employment discrimination cases, summary judgment is proper when a plaintiff fails to establish a factual dispute on an essential element of her case. Helfter v. UPS, Inc., 115 F.3d 613, 615-16 (8th Cir. 1997). The plaintiff's evidence must go beyond the establishment of a prima facie case to support a reasonable inference regarding the alleged illicit reason for the defendant's action.

Landon v. Northwest Airlines, 72 F.3d 620, 624 (8th Cir. 1995) (citing Reich v. Hoy Shoe Co., 32 F.3d 361, 365 (8th Cir. 1994)).

Conclusions of Law

The plaintiff first contends that he was deprived of a pay increase and other benefits due to him in violation of several provisions of the FMLA. The plaintiff further contends that the defendants unlawfully deprived him of vacation pay, sick pay, and other benefits owed to him pursuant to established CRST policy, in violation of Iowa's wage payment collection law, Iowa Code § 91A. Finally, the plaintiff contends that he, as a non-exempt employee, was deprived of overtime pay in violation of the Fair Labor Standards Act.

A. Plaintiff's Claims Under the Family and Medical Leave Act

Pursuant to the Family and Medical Leave Act, an eligible employee is entitled to "a total of 12 workweeks of leave during any 12-month period for" various reasons, including "a serious health condition that makes the employee unable to perform one or more of the essential functions of his or her job." 29 C.F.R. § 825.200(a)(4). The Act also prohibits employers from interfering with an employee's rights under the Act, including discriminating against an employee who has or is using FMLA leave. See 29 C.F.R. § 825.220. Under the Act, employers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions. Id.

1. Retaliation via Revocation of the Plaintiff's Pay Raise

Defendant CRST approved a pay raise for the plaintiff on December 14, 2001. The pay raise was scheduled to become effective on January 1, 2002. The defendants revoked the plaintiff's pay raise on January 7, 2002. It was CRST's policy to perform written evaluations of their employees' job performance and grant annual merit pay raises based upon such evaluations.

The plaintiff first contends that the revocation of his pay raise violated a compulsory provision of the FMLA. 29 C.F.R. 825.215© dictates that pursuant to the FMLA, an

employee "is entitled to any unconditional pay increases which may have occurred during the FMLA leave period, such as cost of living increases." In contrast, "[p]ay increases conditioned upon seniority, length of service, or work performed" are not "unconditional" pay raises and will not automatically be granted under § 825.215© "unless it is the employer's policy or practice to do so with respect to other employees on 'leave without pay.'" See 29 C.F.R. § 825.215(c)(1). In the case of raises based upon work performed, such as the plaintiff's, "any pay increase would be granted based on the employee's . . . work performed, etc., excluding the period of unpaid FMLA leave."[1] See Id. The plaintiff has thus failed to establish that his pay raise was an "unconditional" pay raise within the meaning of § 825.215.

The plaintiff next contends that the revocation of his pay raise constituted retaliation which is prohibited by the FMLA. Specifically, the plaintiff contends that the defendants approved a pay raise for him on the day he began medical leave, December 14, 2001, and then revoked it without reason while he was on leave. "An employee can prove Leave Act retaliation circumstantially, using a variant of the McDonnell Douglas method of proof." Smith v. Allen Health Systems, Inc., 302 F.3d 827, 832 (8th Cir. 2002). To establish a prima facie case of retaliation under the FMLA, plaintiff must demonstrate:

> (1) he engaged in an activity protected under the FMLA; (2) he suffered an adverse employment action by the employer; and (3) a causal connection exists between his protected action and the employer's adverse employment action.

See Darby v. Bratch, 287 F.3d 673, 679 (8th Cir. 2002) (citing Richmond v. ONEOK, Inc., 120 F.3d 205, 208 (10th Cir. 1997)).

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[1] A determination of whether the plaintiff's pay raise was appropriately granted and subsequently revoked "based on" his "work performed" is the very point of contention between the plaintiff and the defendants and is more appropriately analyzed as a question of retaliation under the FMLA. See 29 U.S.C. § 825.215(c)(1).

Before reaching the issue of whether the defendants proffered reason for the withdrawal of the plaintiff's pay raise shows retaliation, it is necessary to address whether the withdrawal of a pay raise constitutes an "adverse employment action" in the context of prohibited retaliation under the FMLA. The defendants, in their motion for summary judgment, assumed but would not concede, that the "rejection of the plaintiff's payroll change notice constituted [an] adverse employment action." In the analogous setting of Title VII discrimination claims, an "adverse employment action" has been defined as those which concern an "ultimate employment decision such as "hiring, granting leave, discharging, promoting, and compensating."[2] Laprise v. Arrow International, 178 F. Supp. 2d 597, 605 (M.D.N.C. 2001). The revocation of a pay raise is an "ultimate employment decision involving [the] denial of a job, promotion, or pay raise." Laprise, 178 F. Supp. 2d at 607. Despite the defendants' characterization of the events surrounding the plaintiff's pay raise as a multi-stage process which had not yet been completed at the time of approval on December 14, 2001, the record indicates that but for the defendants' stepping in and revoking the pay raise, it was set to take effect on January 1, 2002. Accordingly, the court finds that this is not a case in which the plaintiff complains of being denied a promotion or pay raise, but rather is a case in which a pay raise was approved, set to be implemented, and then revoked while the plaintiff was on FMLA leave.

Moreover, the defendants claimed that they revoked the plaintiff's pay raise because it was shown that he had performed poorly in comparison with other fleet managers/dispatchers. The defendants further explained the timing between the approval

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[2]The Supreme Court of the United States has held that a "tangible employment action constitutes a significant change in employment status." Burlington Industries v. Ellerth, 524 U.S. 742, 761 (1998). The Court further held that upon the facts before them, such a "tangible employment action would have taken the form of a denial of a raise or a promotion." Burlington Industries, 524 U.S. at 761. While the court recognizes that Burlington Industries was decided in the context of a Title VII discrimination claim, the definitions readily transfer to the instant analysis based upon the McDonnell Douglas framework common to each.

and the revocation of the plaintiff's pay raise by asserting that the plaintiff's poor performance had not been realized or come to the attention of the appropriate individuals until after the raise had been approved. In other words, the decision to revoke the plaintiff's pay raise was based in part upon a negative evaluation of the plaintiff's work performance, which was either made or first revealed while the plaintiff was on FMLA leave. Whether it was formal or informal, some kind of negative evaluation was used as the basis for discrediting and discarding the plaintiff's favorable earlier evaluation and revoking his pay raise. See Montandon v. Farmland Industries, Inc., 116 F.3d 355, 359 (8th Cir. 1997).

It is undisputed that the plaintiff was recommended and approved for a 3.2% pay increase set to take effect on January 1, 2002. The dispute centers upon the reasons behind the defendants' revocation of the plaintiff's pay raise. The defendants' motivation behind the revocation constitutes the very issue at the heart of the plaintiff's retaliation claim: whether the defendants were interfering with or discriminating against the plaintiff for taking FMLA leave. The plaintiff points out that the decision to revoke his pay raise was made while he was on leave pursuant to the FMLA, and contends that the defendants have provided no competent evidence that any information concerning the plaintiff's work performance came to light during that time which could substantiate the revocation.

The defendants argue that the plaintiff's pay raise was revoked because, (1) the person responsible for the plaintiff's last written evaluation, upon which the pay raise decision was at least in part made, was "demoted in the fall of 2001 for poor performance as a supervisor," and, (2) after the pay raise was approved and the plaintiff had begun FMLA leave, there was a "review of [the plaintiff's] performance and a determination that he was not as productive as other fleet managers."

The defendants argue that the plaintiff is unable to establish anything other than the "mere suggestion of a temporal connection" between his taking leave and their decision to revoke his pay raise. "Generally, more than a temporal connection between the protected conduct and the adverse employment action is required to present a genuine factual issue on retaliation." Smith v. Allen Health Systems, Inc., 302 F.3d 827, 832 (8th Cir. 2002) (quoting Kiel v. Select Artificials, Inc., 169 F.3d 1131, 1136 (8th Cir. 1999)). However, in some cases, the timing of one incident of adverse employment action following a protected activity is itself sufficient to establish the requisite causal connection. Smith, 302 F.3d at 832 (citing O'Bryan v. KTIV Television, 64 F.3d 1188, 1193-94 (8th Cir. 1995)). The instant case may be fairly characterized as such a case.[3]

2. Interference with the Plaintiff's Benefits

The plaintiff next contends that Defendant CRST and Defendants Schommer and Freeman interfered with his "exercise of various benefit rights following his second seizure episode." Specifically, the plaintiff contends that he was initially terminated prior to the exhaustion of his FMLA leave, that his health insurance at partial company expense was initially terminated while he was on FMLA leave, and that "no consideration was given to a leave of absence or an accommodation by way of an extended period of leave for purposes of the Americans with Disabilities Act."[4]

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[3]The court notes that in addition to the temporal proximity, which may be more accurately characterized as temporal "overlap," of the pay raise revocation and the plaintiff's leave under the FMLA, the plaintiff alleges that he was advised that he would not be receiving the pay raise because "the company did not know if he would be coming back to work." Additionally, Defendant Schommer, the person who signed and approved the plaintiff's pay raise, could offer nothing other than speculation in his deposition testimony as to what precipitated the revocation of that raise.

[4]The court solely addresses the plaintiff's claims concerning termination in regard to the FMLA. The plaintiff made no claims under the Americans with Disabilities Act in his complaint or amended complaint. Accordingly, to the extent that the plaintiff now invites the court to analyze his termination in the context of the Americans with Disabilities

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a. The Plaintiff's Termination

Pursuant to the FMLA, an employer can choose one of several methods of calculating the twelve weeks of leave to which an eligible employee is entitled in a given twelve month period. See 29 C.F.R. § 825.200. One such approved method, utilized by the defendants in the instant matter, is to measure the twelve month period from the date that the employee first begins FMLA leave. Id. Under such a calculation, the plaintiff had used nine weeks of FMLA leave when he returned to work on February 15, 2002, and had exhausted his FMLA leave on July 12, 2002.

The plaintiff's first contention is that the defendants interfered with his FMLA leave rights by terminating him prior to the exhaustion of his leave. Defendant Freeman sent a letter to the plaintiff on July 25, 2002, which stated that the plaintiff was terminated and that his effective termination date was June 17, 2002. On August 1, 2002, Defendant Freeman wrote a letter of correction to the plaintiff, stating that his effective date of termination was not June 17, 2002 but instead July 13, 2002. Where an employee is terminated while taking FMLA leave, the court must determine whether the termination was illegally motivated by the employee's choice to take leave, or by other valid reasons. Phelan v. City of Chicago, 347 F.3d 679 (7th Cir. 2003). Here, plaintiff's employment was terminated 12 days after his protection expired. Although CRST first used an incorrect retroactive termination date, the plaintiff suffered no harm from this before it was corrected. An employee is not entitled to restoration of their employment position if, at the end of the FMLA period, that employee is still unable to perform an essential function of the position. St. Hilaire v. Minco Products, Inc., 288 F. Supp. 2d 999, 1008 (D. Minn. 2003) (citing 29 C.F.R. § 825.214). After the exhaustion of the plaintiff's FMLA leave, he remained "unable to perform an essential function" of his position as fleet manager/dispatcher as he was still unable even to attend work. Accordingly, the plaintiff

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[4](…continued)
Act, the court refrains from so doing.

has failed to establish a genuine issue of material fact as to his claim that his termination was in violation of the FMLA. See Kegel, 793 F.2d at 926.

b. Termination of the Plaintiff's Health Care Coverage

The plaintiff next contends that the defendants interfered with benefits owed to him by notifying their health insurance carrier to terminate the plaintiff's coverage effective June 21, 2002, while he was still on protected FMLA leave. The plaintiff concedes that the defendants then modified the coverage termination date to instead take effect on July 13, 2002. The defendants argue that there is "no record evidence" of the claim that they discontinued the plaintiff's coverage under their group health plan, stating that "[i]n fact, [the plaintiff] admits that he always had group health insurance coverage through CRST during his course of employment, and he elected to continue that coverage for six months after his employment was terminated." The defendants further argue that the plaintiff incorrectly paid premiums directly to the health insurer despite CRST's "explicit policy to the contrary." Additionally, the defendants assert that after the plaintiff was terminated, he was no longer an eligible employee under the CRST policy.

"During an employee's FMLA leave, the employer is obligated to maintain group health coverage for the employee if such coverage was provided prior to the leave." O'hara v. Mt. Vernon Bd. of Educ., 16 F. Supp. 2d 868, 892 (S.D. Ohio 1998) (citing 29 U.S.C. § 2614(a)(2)). This obligation includes the duty to pay insurance premiums in the manner paid prior to the employee's FMLA leave. See O'hara, 16 F. Supp. 2d at 892. As was the case with the plaintiff's termination from employment with the defendants, had the defendants terminated their contribution to the plaintiff's health insurance under their group plan during his protected FMLA leave, such a termination may have been evidence of retaliation or interference with the plaintiff's FMLA rights. However, the defendants subsequently modified the plaintiff's date of termination, and by extension his eligibility for health insurance coverage, to a date subsequent the exhaustion of the plaintiff's allotted FMLA leave. Accordingly, the plaintiff has failed to adduce evidence that the defendants

terminated him from their group health insurance coverage in violation of the FMLA. See Kegel, 793 F.2d at 926.

c. Denial of Disability Benefits[5]

The plaintiff contends that the defendants wrongfully denied him application for disability benefits. Specifically, the plaintiff asserts that the defendants initially gave him an application for disability benefits but later notified him that he was not eligible to apply.[6] The defendants argue that under CRST policy, only full time drivers were eligible to receive disability benefits and that the plaintiff, as a fleet manager/dispatcher, was not eligible to receive disability benefits under their policy. Accordingly, the defendants argue that they did not "interfere" with any benefits due the plaintiff.

The FMLA mandates that "the taking of leave" under the Act, "shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced." 29 U.S.C. § 2614(a)(2). The issue to be determined is whether disability benefits were benefits to which the plaintiff was entitled and had "accrued prior to the date" on which the plaintiff began FMLA leave. The portion of the CRST policy concerning eligibility for the disability plan clearly states that all active full time drivers are eligible to enroll in the plan. The plaintiff does not indicate when he was "initially provided" an application for benefits. Assuming, without deciding, that the plaintiff sought to apply for disability benefits while he was a fleet manager/dispatcher, CRST's

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[5]The court notes that in his resistance to the defendants' motion for summary judgment, the plaintiff repeatedly refers to his claim as an action for "long-term" disability benefits. In contrast, the defendants and the CRST policy provided in the record refers to "short-term" disability benefits. For the purpose of analyzing the plaintiff's claim in this regard, the court assumes that the plaintiff and the defendants are referring to the same benefits, and refers to such benefits as "disability benefits" herein.

[6]The plaintiff also states that after hiring an attorney, his application was "ultimately submitted" and he began receiving disability benefits. Considering that the plaintiff's goal of receiving benefits was ultimately attained, the court addresses this issue as one of interference with his benefits in violation of the FMLA.

policy as produced in the record, would preclude him from being eligible to do so. Nothing in § 2614 of the FMLA is to be construed as entitling any restored employee to any "right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave." 29 U.S.C. § 2614(3)(B). According to the plain language of CRST's policy concerning eligibility for enrollment, disability benefits were not a "benefit" to which the plaintiff, as a fleet manager/dispatcher, "would have been entitled" had he not taken FMLA leave. See Id. Therefore, the plaintiff has failed to establish a genuine issue of material fact as to his claim that the defendants denied him application for disability benefits in violation of the FMLA.

B. Plaintiff's Claims Pursuant to Iowa Code § 91A

Iowa Code § 91A.3 mandates that employers pay "all wages due [their] employees, less any lawful deductions." I.C.A. § 91A.3. The enforcement provision provides, in relevant part:

> When it has been shown that an employer has intentionally failed to pay an employee wages or reimburse expenses pursuant to [§ 91A.3] . . . the employer shall be liable to the employee for any wages or expenses that are so intentionally failed to be paid or reimbursed.

I.C.A. § 91A.8. Wages due an employee under the Act include "[v]acation, holiday, sick leave, and severance payments which are due an employee under . . . a policy of the employer." I.C.A. § 91A.2(7)(b). The plaintiff contends that the defendants deprived him of vacation pay, sick pay, and other benefits due him pursuant to CRST's policy.

First, the plaintiff contends that based upon his length of service and CRST's policy, he was "shorted" three days of vacation pay. The defendants initially argued that the plaintiff had not completed his fourteenth year of employment and was thus not entitled to twenty days of vacation pay. The defendants now concede that the plaintiff was in his fifteenth anniversary year when he was terminated. However, the defendants contend that because the plaintiff worked an abnormal work-week, being four days at 44.5 hours rather

than five days at 40 hours, he was actually paid more vacation time than he was due under CRST's vacation policy. The plaintiff and defendants' conflicting interpretations of CRST's vacation policy and its application to the plaintiff's case is a factual dispute on an essential element for which summary judgment is inappropriate.[7] See Helfter, 115 F.3d at 615-16.

The plaintiff additionally alleges that he "has also been shorted at least one day of sick pay and one day of holiday pay." However, the plaintiff makes no effort to point to any record evidence in support of his claims for sick and holiday pay. The plaintiff is only entitled to all reasonable inferences that can be drawn from the evidence without resort to speculation. See Sprenger, 253 F.3d at 1110. Accordingly, the plaintiff has failed to establish a genuine issue of material fact concerning his entitlement to sick and holiday pay. See Kegel, 793 F.2d at 926.

Finally, the plaintiff contends that the defendants owe him six months of health insurance coverage, partially at their cost, "pursuant to a plan described in the personnel policies of the company." Section 91A defines "wages" as including benefits such as health insurance coverage. However, a review of the relevant portion of the defendants' policies reveals that "company contributions" are to continue for "eligible employees absent due to sickness based upon the employee's length of service." The plaintiff was not an "eligible employee" nor was he "absent" once he had been terminated. Accordingly, the plaintiff has failed to establish a factual dispute as to whether the defendants owed him six months of health insurance coverage. See Helfter, 115 F.3d at 615-16.

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[7] It appears that the defendants are focusing on the language "will be compensated for 40 hours pay per week at the regular straight time rate," and argue that, under their interpretation of that language, the plaintiff's total vacation pay equated to twenty-three days rather than the twenty days to which he was entitled.

C. Plaintiff's Claim Under the Fair Labor Standards Act

The plaintiff contends that the defendants owe him overtime back-pay for having regularly and continuously worked more than forty hours in a given work-week throughout his career as a fleet manager/dispatcher. The defendants argue that the plaintiff was a bona fide administrative employee in the context of the Fair Labor Standards Act (FLSA), and is therefore exempted from the Act's overtime pay requirements.

"Under the FLSA, employees are entitled to additional compensation for working more than forty hours in a week." Spinden v. GS Roofing Company, Inc., 94 F.3d 421, 426 (8th Cir. 1996) (citing 29 U.S.C. § 207(a)). The Act exempts several categories of employees, including "bona fide administrative employees," from operation of the overtime payment provision. See Spinden, 94 F.3d at 426 (citing 29 U.S.C. § 213(a)(1)). The exemption from overtime pay is to be narrowly construed by the court. See Id. (citing McDonnell v. City of Omaha, Neb., 999 F.2d 293, 295 (8th Cir. 1993)). The burden is on the employer to establish an exemption from the Act. Gilreath v. Daniel Funeral Home, Inc., 421 F.2d 504, 508 (8th Cir. 1970) (citing Idaho Sheet Metal Works, Inc. v. Wirtz, 383 U.S. 190, 206 (1966)). Different tests apply to determine whether an employee is a bona fide administrative employee exempted from the overtime provision of the FLSA. See Spinden, 94 F.3d at 426. Where, as in the case of the plaintiff, the "employee earns more than $250 per week, the 'short test' applies." Id. (quoting Shockley v. City of Newport News, 997 F.2d 18, 28 (4th Cir. 1993)). Under the "short test" for exemption from overtime pay:

> [A]n employee qualifies for the administrative exemption if his "primary duty consists of the performance of 'office or nonmanual work directly related to management policies or general business operations of his employer or his employer's customers,' which includes work requiring the exercise of discretion and independent judgment."

Id. (citing 29 C.F.R. § 541.2(e)(2)) (incorporating 29 C.F.R. § 541.2(a)(1)). The determination of whether an employee is exempt must be analyzed "on the basis of

whether his duties, responsibilities, and salary meet all the requirements" of the "short test." Mitchell v. Branch Motor Express Company, 168 F. Supp. 72, 76 (E.D. Pa. 1958). "In any specific case it is the actual work performance, the responsibilities, and the salary of the individual employee which determines whether a particular test has been met or whether the exemption applies." Mitchell, 168 F. Supp. at 76.

The plaintiff insists that his work was not "work directly related to management policies or general business operations of the employer or the employer's customers," and that his work did not "require the exercise of discretion and independent judgment." Specifically, the plaintiff contends that he was not an "exempt" employee because he "was not primarily responsible for scheduling particular drivers or working with customers," because he was a "troubleshooter" who "worked weekend nights," because he didn't have many of the responsibilities that "regular day time" dispatchers had, and because he had no authority to hire drivers and never gave a written warning to or fired any drivers.

The defendants argue that the plaintiff exercised discretion and independent judgment because he had the authority and discretion, which he in fact used without supervision, to instruct other employees, because he had the authority to discipline other employees, and because he was responsible for training other employees. The defendants further argue that the plaintiff's primary duties consisted of "office or nonmanual work directly related to" general business operations. The defendants' list the plaintiff's duties as fleet manager/dispatcher as follows:

> listening to driver concerns and solving the problem; placing student drivers with lead drivers; training drivers; continu[ing] driver development; handling driver disciplinary action; assisting in freight assignment; teaching orientation of new drivers about the operations department; maintaining driver retention; handling equipment utilization and efficiency; assuring the fleet meets customer service objectives; interacting with terminal and coordinate personnel needs; handling drive cash flow through advance system; answering phone inquiries from drivers regarding discipline policies and equipment policies; monitoring driver leave time and duration

> of out of service trucks; and responsibility for approximately 75-100 drivers and 45-55 tractors.

The plaintiff admitted, in his deposition testimony, that during his shift he "supervised all the drivers," that he trained the drivers over the phone, that he did not take direction from anyone in training the drivers, and that he used his own independent judgment in training the drivers.[8] In his resistance to the defendants' motion for summary judgment, the plaintiff stated that he was "one of [two] or [three] dispatchers that kept things running until the next day shift came in." Despite the plaintiff's apparent understanding that this description illustrates that he was not an administrative employee, the court finds that the fact that he was in charge during his work hours, at least to the extent conceded, only lends support to a determination that he exercised discretion and independent judgment. The plaintiff makes much of what he did not do in his capacity as fleet manager/dispatcher. The nature of the overtime exemption encourages employees to minimize their discretionary duties while the employers tend to overemphasize the same. See Harrison v. Preston Trucking Company, Inc., 201 F. Supp. 654, 656 (D. Md. 1962). From the evidence presented, this court concludes that the plaintiff customarily and regularly exercised discretion and judgment as a fleet manager/dispatcher, and was further required to do so, to the degree necessary for him to appropriately be labeled a bona fide administrative employee exempted from the overtime regulations. See Harrison, 201 F. Supp. at 656. The court further finds that the plaintiff's job duties as a fleet manager/dispatcher were "directly related" to "general business operations" of the defendants and the defendants' customers. Accordingly, there is no genuine issue of

[8]The plaintiff also characterizes himself as "the troubleshooter that worked weekend nights." Another term for "troubleshooter" is "repairman," and both terms bring to mind the tasks of decision making, problem solving, and most definitely the exercise of "discretion" and "independent judgment." Accordingly, the plaintiff, by his own description, concedes that his role as fleet manager/dispatcher was one which entailed independent decision making and the exercise of discretion.

material fact as to whether the plaintiff was an "administrative employee" exempted from the overtime provision of the FLSA, and summary judgment on this claim is appropriate.

Upon the foregoing,

IT IS ORDERED

Defendants' motion for summary judgment is GRANTED as to the plaintiff's claims of interference with his benefits pursuant to the FMLA, the plaintiff's claims concerning sick and holiday pay pursuant to Iowa Code § 91A, and the plaintiff's claim for overtime pay pursuant to the FLSA. Defendants' motion for summary judgment is DENIED as to the plaintiff's claim of retaliation for revocation of his pay raise pursuant to the FMLA, and the plaintiff's claim concerning vacation pay pursuant to Iowa Code § 91A. Plaintiff's motion for summary judgment is DENIED.

June 16, 2004.

JOHN A. JARVEY
Magistrate Judge
UNITED STATES DISTRICT COURT